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Technical assistance and capacity-building

Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya

Report of the Office of the United Nations High Commissioner for Human Rights*

Summary

The present report, submitted pursuant to Human Rights Council resolution 28/30, has been prepared on the basis of an investigation carried out by the Office of the United Nations High Commissioner for Human Rights (OHCHR). It describes widespread violations of international human rights law and international humanitarian law, and abuses of human rights, perpetrated by all parties to the conflict in Libya throughout 2014 and 2015. The report also describes the situation of human rights defenders, journalists, migrants, the Tawerghan community and children, and the administration of justice in Libya in this context. It also provides an assessment of the justice sector, and describes initiatives towards accountability.

In the report, OHCHR also provides an update on technical assistance and capacity-building provided to support key institutions and civil society organizations. It concludes the report with recommendations addressed to all parties to the conflict, the Government, the international community, the Human Rights Council and the Security Council.

* The information contained in the present report should be read in conjunction with the conference room paper containing the detailed findings of the investigation of the Office of the United Nations High Commissioner for Human Rights on Libya (A/HRC/31/CRP.3).

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I. Introduction

A. Mandate

1. On 27 March 2015, the Human Rights Council adopted its resolution 28/30, in which it requested the United Nations High Commissioner for Human Rights urgently to dispatch a mission to investigate violations and abuses of international human rights law committed in Libya since the beginning of 2014, and to establish the facts and circumstances of such abuses and violations with a view to avoiding impunity and ensuring full accountability, and to submit to the Council a written report on its findings, which should also contain an update on technical assistance, capacity-building and cooperation with the Government of Libya, with recommendations for future capacity-building needs that include but are not limited to the justice system and accountability.

2. In accordance with the mandate, the mission focused the investigation on violations and abuses committed from 1 January 2014, and examined the actions of both State and non-State actors. During the investigation, the Office of the High Commissioner (OHCHR) received information concerning individuals with alleged responsibility for violations and abuses. That information has been retained on a strictly confidential basis.

B. Methodology

3. The Government of Libya[1] expressed its support for the investigation and offered assistance should the OHCHR investigation team[2] conduct missions to Tobruk and Al-Baida, for which the High Commissioner is grateful. Owing to the security situation, only a one-day visit to Tripoli, limited to the airport, was possible. A list of questions was dispatched to the Government, although no response had been received as at January 2016.

4. The High Commissioner expresses his appreciation to the Government of Tunisia for hosting the team in Tunis, made necessary by the continuing difficult security environment in Libya. Fact-finding activities were largely undertaken through missions and remote contact with individuals in Libya. The team undertook missions in Tunisia and to Libya, Egypt, Turkey, Jordan and Italy, and facilitated the travel of some victims and witnesses to Tunis. The team met with more than 250 interlocutors, including more than 200 victims and witnesses. A public call for submissions was issued in July 2015 and disseminated to States Members of the United Nations in August and September 2015. OHCHR received 66 submissions containing more than 900 individual complaint files. The team coordinated closely with the United Nations Support Mission in Libya (UNSMIL) and sought inputs from the national human rights institution of Libya, the National Council for Civil Liberties and Human Rights and special procedure mandate holders (from whom a coordinated response was received). The team also sought information from other United Nations entities. The United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), the United Nations Development Programme and the Operational Satellite Applications Programme (UNOSAT) also provided valuable assistance.

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[1] At the time of the investigation, conducted from July to December 2015, there were two separate authorities in Libya. In the present report, the "Government of Libya" refers to the internationally recognized authorities at the time, which were based in Tobruk/Al-Baida.

[2] The team consisted of six human rights officers (a coordinator, three human rights investigators, a legal adviser and a gender adviser) and translation, security and administrative staff.

5. Besides the limited access to Libya, another challenge faced by the investigation team was the hostile environment for those raising human rights issues. The political divisions in Libya and the fact that most international organizations are operating remotely also had an impact on investigations. OHCHR was nonetheless able to gather a substantial body of information leading to the finding that there are reasonable grounds to believe that gross violations of international human rights law, serious violations of international humanitarian law and serious abuses of human rights have been committed in Libya. The High Commissioner stresses the need for ongoing international attention to ensure the effective, prompt and thorough investigation of these violations and abuses, and that those responsible are held accountable.

II. International legal framework

6. The investigation was carried out considering Human Rights Council resolution 28/30 as a whole and taking into account the approach of previous investigative missions mandated by the Human Rights Council. The investigation was conducted within the framework of all relevant international legal norms, including international human rights law, international humanitarian law and international criminal law.

III. Context

7. Still recovering from the Qadhafi period and the armed conflict of 2011, Libya experienced a dramatic decline in its political and security situation in 2014 and 2015, amidst competing legislatures, divided State security institutions and forces, and multiple armed groups, with devastating effects for the population.

8. In the east, in May 2014, retired General Khalifa Haftar launched *Al Karamah* ("Operation Dignity"), reportedly to eradicate "radical terrorist" groups from eastern Libya. An alliance of groups, including Ansar al-Sharia, joined the Benghazi Revolutionaries Shura Council to fight forces deployed under Operation Dignity. As at December 2015, hostilities were still ongoing. In the west, heavy fighting erupted in Tripoli in July 2014. Originally focused on control of Tripoli international airport, Misrata-based armed groups together with armed groups from Tripoli, Al-Zawiya, Zuwara and other towns launched the *Fajr Libya* ("Libya Dawn") campaign against armed groups affiliated with Zintan. Thereafter, Libya Dawn gained control of Tripoli as armed groups from Zintan withdrew. Libya Dawn expanded to the Warshafana region, and launched counter-offensives in the Nafusa Mountains area. Ceasefire agreements in 2015 have since reduced the intensity of clashes in the west.

9. In 2014 and 2015, tribal armed groups engaged in localized hostilities in the south, particularly in Sabha, Awbari and Al-Kufra. Armed conflicts in the north also spilled over to the south, with some groups allying with Operation Dignity or Libya Dawn.

10. In the meantime, groups pledging allegiance to Islamic State in Iraq and the Levant (ISIL) further emerged as a force, particularly in Derna, Sirte and Benghazi. In addition to prompting responses by the Libyan National Army aligned with Operation Dignity and a number of armed groups, Egypt and the United States of America engaged in air strikes targeting these groups.[3]

[3] See Aswat Masriya, "Egypt's Military Strikes ISIS in Libya", 16 February 2015, *Egyptian Streets*, and "U.S. Airstrike Targets Senior ISIL Leader in Libya", United States Department of Defense, 14

11. Political divisions deepened in Libya in 2014 and 2015, resulting in the formation of administrations in both the east and the west. In June 2014, elections were held for a new legislature, the House of Representatives, which confirmed the established Government. Owing to the precarious security situation in Tripoli, in August 2014, the Government, led by Prime Minister Abdullah Al-Thani, moved to Al-Baida. The House of Representatives commenced its sittings in Tobruk. The previously established legislature, the General National Congress, then re-convened, and parallel ministries were established in Tripoli. The House of Representatives endorsed Operation Dignity, while the General National Congress supports the Libya Dawn campaign. Following a year-long political dialogue, the Libyan Political Agreement to establish a Government of National Accord was signed on 17 December 2015.

IV. Armed actors in Libya

12. The current situation should be considered against the background of the rise of "revolutionary" armed groups during the 2011 armed conflict, and the lack of progress in vetting and integrating those groups into formal security forces. Many groups were placed under the nominal authority of the Ministries of Defence, the Interior or Justice, received salaries from the State and, in some cases, given law enforcement and custodial functions. Armed groups appear, however, to have continued to operate with significant autonomy, including by maintaining their own command structure. The number and membership of such groups have increased substantially. They have consolidated effective control over large territorial areas, strategic installations and State institutions. In particular, armed groups are in control of many detention facilities. The already fragmented Libyan National Army has been further divided, with opposing authorities recognizing different commanders.

13. The major armed actors active in Libya include Operation Dignity (comprising the Libyan National Army and armed groups aligned with General Haftar); Shura Councils, including Ansar al-Sharia opposed to Operation Dignity; Libya Dawn (comprising Libya Shield Forces and other armed groups); a coalition of armed groups opposing Libya Dawn; tribal armed groups (particularly in the south); and groups pledging allegiance to ISIL.

V. Patterns of violations and abuses

A. Unlawful killings and executions

14. OHCHR documented a number of unlawful killings, in particular the execution of individuals taken captive or detained/abducted, and assassinations of those voicing dissent. Reports of unlawful killings were documented in all conflict areas and by most major groupings of armed actors.

15. In eastern Libya, OHCHR documented six cases in which individuals alleged to be members or supporters of Ansar al-Sharia were executed after their arrest or capture by forces aligned with Operation Dignity. In five of the cases investigated, the families only became aware of the death of their relatives through photographs posted on social media. One member of the Libyan National Army confirmed having received specific orders from a superior to kill captured Ansar al-Sharia operatives. Some fighters who surrendered were

November 2015.

also killed. OHCHR received information of two similar executions carried out by groups affiliated with Libya Dawn, though was unable to verify them.

16. OHCHR investigated seven cases relating to the assassination of perceived opponents to those exercising power, six of which were committed in Benghazi. Responsibility for the assassinations was most commonly attributed by interviewees to Ansar al-Sharia. Of those targeted, four were human rights defenders, one a judicial actor and two alleged Qadhafi supporters.

17. Groups pledging allegiance to ISIL have engaged in the public execution of civilians and persons placed hors de combat, mainly in Sirte and Derna, though also in other areas. Examples include the beheading of a group of men, including 20 Egyptian Coptic Christians, in early 2015, and the killing of captured fighters in August 2015 whose bodies were subsequently desecrated and publically displayed.

18. Unlawful killings were also reported in Sabha and Awbari in the south, including the shooting of several individuals defending their homes from raids or appropriation by rival tribal armed groups.

B. Attacks on civilians and civilian objects, and other protected persons and objects

19. International humanitarian law requires that parties direct their attacks only against legitimate military objectives, respecting the principles of distinction, proportionality and precaution. Many attacks during the conflict in 2014 and 2015 appear to have been indiscriminate in nature, with a particular impact on highly populated residential areas, including in Benghazi, Tripoli, Warshafana, the Nafusa Mountains areas, and in the south. Measures taken to protect civilians were insufficient. Heavy weaponry, such as Grad rockets, which are not appropriate for use in highly populated residential areas given that they cannot target with sufficient precision, have been employed. OHCHR was unable to determine the parties responsible for many specific attacks owing to the limitations to access and information and the similarity of the weapons being employed by the parties to the conflict in Libya. OHCHR did, however, receive reports of indiscriminate attacks in all conflict areas.

20. In one case investigated by OHCHR, two children were killed when on 26 April 2015 a residential building in the Al-Hada'eq neighbourhood of Benghazi was hit by a rocket. In May 2015, three children were killed and two injured when a shell struck a house in Balo'n, in the Al-Fuweihat neighbourhood of Benghazi. It was reported that there was no fighting in either area at the time of the attacks, nor were there any known military objectives being pursued.

21. Indiscriminate attacks also took place in Tripoli and other areas, such as Warshafana and the Nafusa Mountains, including Kikla. In one case, a rocket said to have been launched by Libya Dawn groups in Al-Hashan, a neighbourhood south of Warshafana, hit a car containing a family seeking to escape the shelling, killing three family members. Armed groups affiliated with Zintan were also reported to be using weaponry unsuited for precise targeting in highly populated residential areas, such as Grad rockets, tanks, anti-aircraft weaponry and mortar shells.

22. Groups pledging allegiance to ISIL have conducted suicide bombings, which have been indiscriminate in their effects. In one case, in Al-Qubba, in February 2015, a vehicle loaded with explosives was used to target a national security directorate. Two explosions caused the death of many civilians nearby.

23. The south has not been spared. In one case investigated by OHCHR, in December 2014, two Tabu children were seriously injured when a shell struck their house in Al-Daisa, a neighbourhood east of Awbari. As in other similar cases, no hostilities were reported in the neighbourhood at the time, nor is OHCHR aware of any military objectives being pursued at that location.

24. The conflict witnessed attacks against or otherwise with an impact on other persons and objects given protection under international humanitarian law, including health facilities, ambulances, medical personnel and humanitarian workers. Attacks were documented, for instance, against the Tripoli Medical Centre by the "Al-Tajeen Brigade", an armed group affiliated with Libya Dawn and against the Al-Zawiya hospital by Warshafana armed groups. Shelling struck other facilities, including the Al-Zahraa City hospital. Reports were also received of attacks against ambulances marked with the distinctive Red Crescent symbol in the area around Al-Kufra by Brigade 448. OHCHR documented cases of abduction and hostage-taking of humanitarian workers by members of an Al-Magarha armed group in the south.

25. Private property was appropriated, looted and deliberately destroyed in conflict areas. OHCHR investigated four cases in Benghazi in which individuals of western origin had their property taken or destroyed by armed groups affiliated with Operation Dignity, including the Awliaa al-Damm armed group. Similar reports were received relating to groups affiliated with Libya Dawn in the Warshafana area. Reports were also received of the appropriation and destruction of property by groups pledging allegiance to ISIL.

C. Arbitrary detention, abductions and disappearances

26. It is estimated that more than 9,000 people are currently detained in facilities operated by the Ministry of Justice and the Department for Combating Illegal Migration of the Ministry of the Interior.[4] This figure does not include the significant number of people detained elsewhere, such as in other facilities operated by the Ministry of the Interior, the Ministry of Defence and/or those operated by armed groups.[5]

27. OHCHR interviewed former detainees who had been arbitrarily detained. Few of those arrested were charged with any criminal offence. Some were unaware of the reasons for their arrest or detention. Virtually none had access to rights of due process and most were denied other rights, such as contact with their families. One example related to a 54-year-old man detained in and around Benghazi in May 2014 by the Libyan National Army aligned with Operation Dignity, reportedly because he was from Derna, and thus presumed to be associated with ISIL.

28. Given the limited functioning of courts, there is little recourse to judicial review of the legality of detentions. Even when recourse is available, court orders for release have not always been effective. In one case investigated by OHCHR, in January 2014, a judge

[4] According to the judicial police, as at March 2014, some 6,200 people (including 80 to 90 women and 10 children) were being held in facilities run by the Ministry of Justice, while the Office of the United Nations High Commissioner for Refugees (UNHCR) and IOM estimated that, as at May 2015, 3,245 people (329 women and 34 children) were being held in facilities operated by the Department for Combating Illegal Migration.

[5] In the present report, the term "detention" is intended to reflect deprivation of liberty by both State officials and armed groups, given that armed groups remain in control of many facilities and that many armed groups were theoretically brought under the purview of government ministries during the integration processes carried out after 2011.

ordered the release of a man in Tripoli. On his way home, however, the man was re-apprehended by the Tripoli Revolutionaries Brigade and returned to the detention facility.

29. In some cases, individuals were abducted for potential ransom or prisoner exchange. One man from Warshafana reported that he was abducted in November 2014 by an armed group and taken to a facility in Sidi Bilal. His family paid an agreed sum for his release. In other cases, people were held until exchanged for individuals held by an opposing group.

30. Armed groups in particular also control secret or unrecognized detention facilities. OHCHR investigated a number of disappearances attributed to State forces and armed groups[6] after the launch of Operation Dignity and Libya Dawn. The cases included the disappearance, on 20 October 2014, of Abd al-Nasser al-Jeroushi, a prosecutor in the South Benghazi Court. He is understood to have been abducted by an armed group at a checkpoint under the control of the Al Sai'qa battalion of the Libyan National Army, and has not been seen or heard of since. In April 2015, the Ministry of Justice informed UNSMIL that he was being held at an unofficial detention facility in Al-Marj, although the Attorney-General's office reported to OHCHR that it was unable to confirm his whereabouts.

D. Torture and other ill-treatment

31. OHCHR documented numerous cases of torture and other forms of cruel, inhuman or degrading treatment or punishment, particularly of individuals in detention facilities. Individuals suffered beatings with plastic pipes or electrical cables, prolonged suspension in stress positions, solitary confinement, incommunicado detention and electrocution. Many were also deprived of adequate food or water, were subjected to threats of a sexual nature, or to the extortion of payment in exchange for freedom. Torture was frequently reported by detainees as having been perpetrated at the time of arrest, during apprehension or questioning during interrogations, or during detention in facilities operated by the State and/or armed groups, as well as in makeshift facilities.

32. Torture has resulted in the death of detainees in various facilities, including at the Al-Birsis facility, the military police facility in Al-Abyar, the Military Intelligence Battalion base in Al-Rajma, Al-Sai'qa military base in Bu'atni, and in a facility reportedly operated by the Tripoli Revolutionaries Brigade.

33. OHCHR observed a lack of redress for alleged cases of torture and other ill-treatment. One illustrative case was that of a man, arrested in June 2014 by the Criminal Investigations Department of Al-Marj. On the day after his arrest, his body, which reportedly showed signs of torture, was transferred to Al-Abyar hospital. The autopsy report concluded that severe internal bleeding had been the cause of his death. The Prosecutor from Al-Marj sought to question an official on the incident. OHCHR understands that the Ministry of the Interior denied the request, and the case was closed.

E. Gender-based violence and discrimination against women

34. There has been a series of attacks by armed groups against women promoting equality, social justice and accountability in Libya. The assassination of activists, such as Salwa Bugaighis, Fareeha Al-Berkawi and Intissar Al-Hasaeri, and the threats, harassment

[6] In the present report, the term "disappearance" refers to enforced disappearances committed by the State as well as disappearances committed by armed groups. It is intended to reflect both the various legal regimes applicable to enforced disappearances and the factual complexity in Libya vis-à-vis the status of armed groups, many of which were theoretically brought under State ministries.

and assaults suffered by others appear designed to send a broader message that women should not be vocal in the public sphere.

35. OHCHR staff spoke with a number of women who reported that they had been subjected to sexual violence but did not wish to provide detailed accounts or have their stories shared publicly for fear of retaliation, perceived stigma, family pressure or trauma. OHCHR documented the case of one woman who was abducted in Tripoli by an armed group affiliated with Libya Dawn, drugged and raped repeatedly over a period of six months. She also provided information according to which six girls as young as 11 years of age had been subjected to sexual violence by members of the same group.

36. Many women reported greater challenges to their fundamental rights, such as freedom of movement or the right to work, following the armed conflict of 2011. Some drew attention to religious decrees issued by the Mufti of Libya questioning the equality of men and women as evidence of the entrenchment of a rigid ideology that, when implemented, is harmful to women's rights. Women in Tripoli and Benghazi experienced difficulties in exercising such rights as freedom of movement owing to the requirement that they be accompanied by "male guardians". Six women reported difficulties in obtaining basic civil services in Tripoli, such as identification documents, and 12 women described restrictions placed upon their ability to work.

37. In areas controlled by groups pledging allegiance to ISIL, some women reported having been confined to their home owing to the fear of being exposed to harassment, abduction and servitude. Older girls and women were not allowed to leave their house without being fully covered up, including covering their face (*niqab*). Some women reported that they were no longer able to work or to be seen without a male guardian for fear of reprisals by groups pledging allegiance to ISIL or Ansar al-Sharia.

38. OHCHR also interviewed six women whose access to justice was curtailed out of their fear of retaliation by armed groups controlling relevant facilities and territories, particularly when reporting crimes committed by the groups.

F. Economic, social and cultural rights

39. Enjoyment of economic, social and cultural rights further declined in Libya in 2014 and 2015. Most of the causes related to the conflict, although the situation appears to have been compounded by the economic situation and specific budgetary and planning decisions made by the Government. Women, internally displaced persons, children and migrants were particularly affected. Fighting in and around urban areas has led to the destruction of homes and triggered large-scale displacement; according to UNHCR, the number of internally displaced persons increased sharply from 80,000 in May 2014 to 435,000 in May 2015.

40. According to the Office for the Coordination of Humanitarian Affairs, as at September 2015, 1.9 million people in Libya required essential humanitarian aid in order to meet basic health-care needs. The security situation, including attacks against or with an impact on health facilities, health-care and humanitarian workers, and the departure of foreign medical personnel owing to the violence have been the dominant causes of disruption to health care. Access to health care has also apparently been compromised by the Government's limited investment in infrastructure and programme delivery budget cuts. Structural and administrative deficiencies regarding emergency preparedness and coordination also had an impact on the response.

41. Access to education has been significantly curtailed, particularly in the east; for example, the Office for the Coordination of Humanitarian Affairs estimated in September

2015 that 73 per cent of all schools in Benghazi were not functioning. Schools have been either damaged, destroyed, occupied by internally displaced persons, converted into military or detention facilities or are otherwise dangerous to reach. OHCHR investigated the case of a primary school in Benghazi that had been used as a base and detention facility by an armed group. Children residing in camps for the internally displaced and children with disabilities face particular challenges in their access to education.

42. According to the Office for the Coordination of Humanitarian Affairs, food insecurity affects some 1.2 million people in Libya. In addition to the effects of the conflict, the Government's decision to reduce or cut food subsidies in November 2015 had an adverse impact on access to food. Furthermore, major water networks have been disrupted, which has affected access to safe drinking water, sanitation and hygiene. OHCHR investigated one case in Al-Sasiriyah where the water supply was apparently deliberately cut by an armed group.

G. Administration of justice

43. Judges and prosecutors were at risk of murder, court bombings, assaults and abductions throughout 2014 and 2015. At times, attacks were linked to specific demands, such as the detention or release of certain individuals, or to thwart the arrest and prosecution of armed group members. As a result, courts in Derna, Sirte and Benghazi ceased their activities in 2014; some courts in parts of Benghazi reopened, though only to a limited extent, in 2015. Courts in Tripoli temporarily suspended activities during the fighting in mid-2014.

44. On the basis of the information received, OHCHR assesses that the system for providing security for judicial actors through the Judicial Police is inadequate and flawed. The Judicial Police includes in its ranks thousands of members of armed groups integrated without any comprehensive vetting programme. According to information received by the UNSMIL Human Rights Division, which is supported by OHCHR, only about half of Judicial Police officers reported for duty during the fighting in 2014. Even at full strength, the Judicial Police force lacks the capacity and equipment to repel well-armed attacks. In many facilities, control is effectively exercised by armed groups. In the absence of proper protection, the judiciary cannot deliver justice. As a former Minister of Justice told OHCHR, "a frightened judge cannot rule".

45. Since the armed conflict in 2011, thousands of individuals remain detained. According to the Ministry of Justice, as at March 2014, only 10 per cent of the 6,200 people held in its detention facilities were serving prison sentences following a trial. The vast majority continue to be held without having had their cases properly examined to determine whether sufficient evidence exists for them to be charged or released. It is believed that the number of conflict-related detainees increased during 2014 and 2015.

46. Owing to the collapse of the criminal justice system in many parts of Libya, victims have little recourse to protection, or to an effective remedy for violations and abuses. UNSMIL/OHCHR previously reported that little action had been taken to open prompt, thorough, effective, impartial and independent investigations and to bring perpetrators to justice.[7] To date, there have been very few investigations and no prosecution of leaders or members of armed groups relating to the events of 2014 and 2015. There is also concern that judicial actors have become compromised by succumbing to pressure from armed

[7] See UNSMIL and OHCHR, "Human rights defenders under attack", 25 March 2015.

groups, and that the system is politicized by events such as the appointment of judges by the General National Congress, whose authority is disputed.

H. Human rights defenders and journalists

47. Human rights defenders have been subjected to particular violations and abuses, including assassination, attempted murder, abduction, threats, surveillance, and raids on their homes and offices. Cases of this type have been witnessed predominantly in Benghazi and Tripoli. The cases that OHCHR documented were most commonly attributed by interviewees to armed groups affiliated with Ansar al-Sharia or Libya Dawn. The fear generated by such actions and the impunity enjoyed by perpetrators have forced many to go into hiding or to flee, and threaten to silence independent voices.

48. Many attacks have targeted high-profile activists, producing a chilling effect on the work of other human rights defenders. Lawyer and human rights activist Salwa Bugaighis was killed in Benghazi on 25 June 2014 (on the same day as elections for the House of Representatives), and her husband was disappeared. The perpetrators remain unidentified; the main witness died in police custody. The Prosecutor initially working on the case was abducted and remains missing. OHCHR documented other cases, including the assassination of human rights defenders Tawfik Ben Sa'ud and Sami Al-Kawafi, who were shot dead on 19 September 2014. OHCHR also received eight reports of human rights defenders receiving threatening telephone calls and text messages, as well as, in several cases, being subjected to arbitrary detention or attempted assassination.

49. The national human rights institution of Libya, the National Council of Civil Liberties and Human Rights, has been subjected to attacks in the form of raids on its office and threats against its staff, and has been reduced to minimal functioning.

50. Journalists have faced serious harassment and death threats; some have been subjected to arbitrary detention, abduction and attempted assassination. Female journalists have also been targeted on the basis of their gender. The deaths of several journalists reported to OHCHR require further investigation. Media offices have been raided and attacked. Journalists also face criminal prosecution for defamation and libel for writing on political matters.

I. Migrants[8]

51. Subject to exploitation and abuse by authorities, armed groups and smugglers, migrants are particularly at risk in Libya. Cases of prolonged arbitrary detention and other deprivation of liberty, torture and ill-treatment, forced labour and exploitative labour practices, extortion, trafficking and sexual violence, were all reported in the interviews conducted by OHCHR. Sub-Saharan Africans are at a heightened risk of abuse and racial discrimination. Migrant women have faced sexual violence and exploitation both in and outside detention facilities.

52. Libya has long had a considerable population of migrant workers. It is also a transit country on the migration routes from East and West Africa to Europe. UNHCR estimate

[8] OHCHR has defined an "international migrant" as "any person who is outside a State of which he or she is a citizen or national, or, in the case of a stateless person, his or her State of birth or habitual residence". See OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, 2014, p 4.

that between January to mid-October 2015, more than 140,000 individuals arrived in Italy by sea, the majority of whom departed from Libya.

53. According to the International Organization for Migration (IOM), 3,770 individuals died in 2015 attempting to cross the Mediterranean.[9] Many of the journeys are undertaken on dangerously overcrowded and ill-equipped boats, often resulting in scores of deaths. In addition to death by drowning, suffocation due to the conditions on board was also reported. A Sudanese woman who took the boat from Zuwara to Italy in August 2015 informed OHCHR that 35 individuals, forced to sit in a room on the lower deck with no ventilation, had perished on her boat.

54. A large number of migrants are currently detained in Libya without access to judicial review. According to UNHCR and IOM, as at 4 May 2015, there were at least 3,245 migrants detained in facilities in western Libya alone, including 329 women and 34 children.[10] Detention conditions are inadequate, often characterized by chronic overcrowding, poor sanitation and health care, and insufficient food. Violence is endemic. A Nigerian man held in a centre in Gheryan reported: "a man spilled his soup. One of the guards took out a gun and shot him dead". OHCHR received credible information concerning the incidence of sexual and gender-based violence against migrants both in detention centres and outside, as well as an increase in female victims of trafficking arriving in Europe through Libya.

J. Tawerghan community

55. In addition to the difficulties that internally displaced persons encounter in enjoying their rights, groups perceived as having supported the Qadhafi regime during 2011 are at particular risk of human rights violations and abuses. OHCHR received the greatest number of reports of violations and abuses from members of the Tawerghan community, which has been displaced since the attack by Misrata-based armed groups on Tawergha in August 2011.

56. Although progress was witnessed in 2015 in the dialogue between Misratan and Tawerghan communities to allow for safe returns and reparation (including adoption of a road map in December), OHCHR received reports of difficulties associated with the community's continuing displacement, including reduced livelihoods, ethnic discrimination and limited access to education and health services. Tawerghans reported being subject to a greater risk of arbitrary detention and ill-treatment, especially by Misrata-based armed groups.

K. Children

57. Besides being exposed to the threats posed by armed conflict, children in Libya face significant challenges in enjoying their rights.

58. Access to education has been limited by the reduced availability of schools. In addition, in many areas where schools remain open, parents refrain from sending their children to school for fear of injury to them during attacks. In areas controlled by Ansar al-Sharia, some parents described being afraid to send their girls to school for fear of

[9] IOM, Missing Migrants Project, "Mediterranean Sea: Data of Missing Migrants, Deaths in the Mediterranean by month, 2014 and 2015".

[10] Under international human rights law, the detention of children should be a measure of last resort, and for the shortest appropriate period of time.

abductions. In areas controlled by groups pledging allegiance to ISIL, OHCHR received reports that girls were not allowed to attend school or were permitted only if wearing a full-face veil. OHCHR also received reports of girls being attacked and harassed by armed groups on their way to school in Tripoli.

59. OHCHR received information on the forced recruitment and use of children in hostilities by groups pledging allegiance to ISIL. OHCHR interviewed two boys, aged 10 and 14 years, who had been forcibly taken from their families. They had been forced to undergo religious and military training and to watch videos of beheadings. They were also sexually abused. One boy interviewed by OHCHR, who was "attached in service" to a foreign fighter and was responsible for cleaning clothes and delivering food, reported that, most evenings, "I knew what I had to do, I had to take my clothes off and turn around and bend over facing the wall". According to a press report, the "Islamic State" in Sirte welcomed the "graduation" of 85 boys below the age of 16, describing them as the "Khilapha [Caliphate] Cubs".[11] OHCHR also documented a case in which a child was used to detonate a bomb in a vehicle by a group pledging allegiance to ISIL in Derna, in June 2015.

VI. Overall findings

60. On the basis of the information collected and analysed, there are reasonable grounds to conclude that there were widespread violations of international human rights law and international humanitarian law, and abuses of human rights in Libya throughout 2014 and 2015. These acts, which were committed by all parties to the conflict in Libya, included unlawful killings and executions; indiscriminate attacks, with an impact on civilians and civilian objects; attacks against and attacks having an impact on persons and objects protected under international humanitarian law; unwarranted destruction, appropriation and looting of private property; cases of arbitrary detention, abduction and disappearances, including enforced disappearances; torture and other cruel, inhuman or degrading treatment or punishment; sexual and gender-based violence, and other forms of gender-based discrimination; and violations of economic, social and cultural rights.

61. Judicial actors and court facilities have been attacked. Human rights defenders and journalists have been subject to intimidation and attacks, including assassinations. Women have faced additional repressive measures curtailing their freedoms. Migrants have been arbitrarily detained or deprived of their liberty, frequently in inhumane conditions, and subjected to financial exploitation and forced labour. Tawerghan community members have been subjected to discrimination, and reported having been subjected to arbitrary detention and ill-treatment. Children have faced challenges to their enjoyment of their rights, including education. Groups pledging allegiance to ISIL have forcibly recruited and used children in hostilities and, in some cases, subjected them to sexual abuse.

62. Violations and abuses have not been limited to one area of Libya or to one actor; OHCHR documented such acts having also been perpetrated by State actors and armed groups, some of which affiliated with Libya Dawn or Operation Dignity. Other groups may be acting independently. Some actors were named with particular frequency during the investigation as being responsible for violations and abuses, including Operation Dignity forces and armed groups, such as the Al-Sai'qa Brigades of the Libyan National Army and Awliaa al-Damm; armed groups affiliated with Libya Dawn; Ansar al-Sharia; groups pledging allegiance to ISIL; and tribal armed groups in the south. Allegations were

[11] See Saber Ayyub, "IS to graduate 85 suicide 'Caliphate Cubs' in Sirte tomorrow", *Libya Herald*, 3 December 2015.

nonetheless not limited to these particular groups; other non-State actors, such as smugglers, also committed human rights abuses.

63. There appears to be no effective oversight or accountability in Libya in relation to the commission of violations and abuses. No party to the conflict appears to have been exercising its responsibilities to address violations or abuses, nor have State authorities exercised their responsibilities to provide effective remedies to victims, to prevent future violations or abuses and to ensure non-repetition.

64. Many of the violations and abuses documented may amount to war crimes and other crimes under international law. With regard to war crimes, they included subjecting persons taking no active part in hostilities to violence to life and person (including murder, mutilation, cruel treatment and torture); the taking of hostages; executions without any prior pronouncement of a judgement by a regularly constituted court; directing attacks against the civilian population; directing attacks against buildings, medical units and transport and personnel bearing distinctly the emblems of the Geneva Convention; intentionally directing attacks against humanitarian personnel; pillaging; rape and other forms of sexual violence; the conscription or enlistment of children under the age of 15 years or using them to participate actively in hostilities; and destroying or seizing the property of an adversary.

65. The above-mentioned acts should be immediately and fully investigated as part of a comprehensive criminal investigation, and those responsible should be brought to justice.

VII. Assessment of the justice sector, and moving towards accountability

66. The justice system has been significantly compromised by the security situation and structural weaknesses. Both aspects require attention to ensure access to justice and consolidation of the rule of law. Building on the reforms commenced after 2011, it is important that efforts be renewed to strengthen the justice system.

67. The sheer number of allegations of gross violations of international human rights law, serious violations of international humanitarian law and serious abuses of human rights, and the fact that they have been committed by so many different parties in disparate geographical areas, present enormous challenges, in particular in overcoming the prevailing impunity and fostering accountability.

68. Criminal justice accountability in Libya is currently being pursued through both the International Criminal Court and the Libyan justice system.

69. In its resolution 1970 (2011), the Security Council referred the situation of Libya to the Prosecutor of the International Criminal Court. The Prosecutor of the Court affirmed her belief that the crimes under international law committed in 2014 and 2015 fell within the purview of the referral. The Prosecutor also noted, however, that capacity to pursue these cases had been hampered by resource constraints.[12] The High Commissioner supports resourcing the Court further to enable it to expand its investigations into the events since 2014 as vital for breaking the cycle of impunity in Libya. It is however clear that the Court is not designed to address, and will never be able to pursue, such a large number of cases relating to crimes under international law arising in Libya.

[12] Tenth report of the Prosecutor of the International Criminal Court to the Security Council pursuant to Council resolution 1970 (2011), 26 October 2015, para. 43.

70. While the Government bears primary responsibility for investigating and prosecuting those responsible for serious violations and abuses, it appears that the justice system does not presently have the means or capacity to be able to conduct prompt, independent and credible investigations into allegations or to prosecute those responsible in a manner consistent with human rights. Challenges relate to the lack of protection for judicial actors, victims and witnesses; limitations in the legal framework and the capacities of the judicial system; and, in some quarters, the lack of confidence in the ability of the justice system to render impartial justice, particularly in "political cases" relating to the conflict.

71. Priority actions needed include addressing the security threats to the administration of justice, particularly by armed groups, and reform of the judicial police (including comprehensive vetting in accordance with standards of due process, and ensuring appropriate training and equipment) so that it can provide effective and impartial protection for judicial actors and court facilities. Robust victim and witness protection is required to allow individuals to come forward with information and to engage in proceedings.

72. Continued reform of the Penal Code and the Code of Criminal Procedure is important to ensure that crimes under international law are criminalized under domestic law, and that provision is made for the differing modes of criminal responsibility recognized in international law (including command and superior responsibility). Personnel could be further trained in investigation, prosecution and adjudication of crimes under international law. Given the large number of cases arising in 2014 and 2015, effective case selection and management systems should be established.

73. Trust in the ability of the justice system to render justice must be re-established. Members of the judiciary and other judicial actors should undergo a further process of vetting in accordance with standards of due process, focusing on the removal of persons with responsibility for corruption, bias, incompetence or the commission of human rights violations or abuses. More generally, further measures should be taken to ensure the independence of the judiciary and of investigations; to build the capacity of justice system actors (including the Ministry of Justice); to strengthen the provision of legal services; to increase public access to laws; and to monitor performance. A plan of action addressing the justice sector should be devised and implemented accordingly.

74. In order to maximize the quality and efficiency of proceedings and of technical assistance programmes in this area, the Government might consider creating a specialized judicial structure within Libyan courts to focus on crimes under international law. The structure would need to be supported by specifically appointed judges, prosecutors, investigators and lawyers. Its design would have to take into account security concerns, including with regard to deciding on its location. Consideration could also be given to initially embedding foreign advisers or experts to work in tandem with Libyan officials.

75. Significant discussion would be needed to further such efforts. The High Commissioner therefore supports the convening of a high-level meeting to bring together Libyan actors and international partners to discuss initiatives to foster accountability for the gross violations of international human rights law, serious violations of international humanitarian law and serious abuses of human rights committed in Libya, including those that may amount to crimes under international law.

76. In addition to criminal investigations and prosecutions, steps should be taken to reinvigorate other transitional justice mechanisms, including truth-seeking, reparations and institutional reform. The measures taken since 2011 (including the law on transitional justice, the law on political and administrative isolation and amnesty laws) should be reviewed to ensure compliance with international human rights standards and appropriate coverage of the events of 2014 and 2015.

77. The High Commissioner also supports the listing of individuals responsible for planning, directing or committing acts that violate applicable international human rights law or international humanitarian law, or acts that constitute human rights abuses under the sanctions regime of the Security Council,[13] while urging that sanctions imposed be accompanied by rigorous procedural safeguards to guarantee minimum standards of due process.

VIII. Update on technical assistance

78. In 2015, the UNSMIL Human Rights Division, supported by OHCHR, continued to advise Libyan counterparts on international human rights and rule of law standards. UNMSIL/OHCHR supported the Libyan political dialogue process, and provided technical assistance on the inclusion of human rights provisions. Ongoing technical assistance has been extended to a joint Tawergha/Misrata committee to address issues that include the safe return of Tawerghans to their homes, reparations, accountability of perpetrators and the reconstruction of Tawergha.

79. UNSMIL/OHCHR gave advice to the Constitutional Drafting Assembly on human rights provisions, including during a workshop with some members of the Assembly in Geneva in February 2015. In November 2015, a meeting was organized for directors of Libyan rehabilitation and correction institutions, which led to the adoption of a new Code of Ethics and Conduct for the personnel of such institutions. UNSMIL/OHCHR contributed to sessions on human rights monitoring and reporting standards during workshops in Tunisia organized by partner organizations, for personnel from the National Council for Civil Liberties and Human Rights as well as civil society organizations. In August 2015, UNSMIL/OHCHR convened a meeting of Libyan civil society organizations to learn from comparative experiences of peacebuilding.

80. Once the Government of National Accord is established, it is expected that the United Nations will be able to increase its capacity-building activities.

IX. Recommendations

81. **Recognizing the urgent need to bring an end to the widespread human rights violations and abuses being committed in Libya, and to provide for justice and accountability, the High Commissioner appeals to all parties to the conflict promptly to cease hostilities and to support the establishment of a Government of National Accord, to move towards a State based on respect for human rights and the rule of law.**

82. **Accordingly, the High Commissioner recommends that all parties to the conflict:**

(a) **Desist immediately from all violations of international human rights law and international humanitarian law and abuses of human rights, including those amounting to crimes under international law;**

(b) **Declare that such acts will not be tolerated and remove those suspected of such acts from active duty pending investigation.**

83. **The High Commissioner recommends that the Government of Libya:**

[13] See Security Council resolution 2213 (2015), para. 11.

(a) Ensure that all people within the territory of Libya whose rights have been violated are afforded an effective remedy;

(b) Ensure prompt, thorough and effective investigations by independent and impartial bodies of allegations of violations and abuses, and that those responsible are held accountable;

(c) Address urgently the proliferation of armed groups, including by instituting a programme of disarmament, demobilization and reintegration;

(d) Resume State-building activities as soon as feasible, with a particular focus on building inclusive institutions, effective law enforcement agencies, an independent and impartial justice sector and a unified armed force operating under civilian control;

(e) Institute a comprehensive vetting programme compliant with standards of due process to remove and prevent the recruitment into State services – including armed forces, law enforcement and judicial services – of individuals about whom there are reasonable grounds to believe they have been involved in violations of international human rights law or international humanitarian law, or abuses of human rights;

(f) Address the situation of conflict-related detainees, including by ensuring that the State is in control of all detention facilities, and that the cases of detainees are appropriately screened with a view to either charge or release them in accordance with international standards;

(g) Ensure the proper treatment of all individuals in detention or deprived of liberty, including by eliminating torture and other ill-treatment, including sexual violence; access must be ensured to medical treatment, sufficient food and water. Detainees should have access to legal counsel and courts to seek legal review, as well as to their families and other relevant individuals. International and national monitoring organizations should be permitted regular, unhindered and without-notice access to all places of detention;

(h) Support the independence of the National Council for Civil Liberties and Human Rights, and ensure its ability to operate safely and in accordance with international standards;

(i) Respect and promote the role of civil society, including by ensuring the protection of human rights defenders and journalists;

(j) Address urgently the situation of migrants to ensure that all individuals, regardless of their status, are able to enjoy their human rights, including by adopting and implementing an effective refugee status determination procedure and implementing alternatives to migration-related detention, and taking effective action to combat human trafficking;

(k) Facilitate the voluntary return of persons who are currently internally displaced, including the Tawerghan community, in a safe and dignified manner;

(l) Ensure respect for the rights of children, including by combating recruitment and the use of children by groups pledging allegiance to ISIL, and redressing gaps in children's enjoyment of rights, including the right to education;

(m) Take effective action to eliminate sexual and gender-based violence, including by implementing a gender-sensitive protection and reporting mechanism and providing rehabilitation services and access to justice for victims;

(n) Review budgetary arrangements that limit funding for programmes relating to economic and social rights (such as food, education and health care), and

take immediate steps to remedy damage to facilities and to bolster systems of emergency response, including through coordinated international assistance;

(o) In relation to further criminal justice accountability measures:

(i) Extend full cooperation with and support for the International Criminal Court by assisting its investigations and complying with its rulings;

(ii) Consider the establishment of a specialized judicial structure within Libyan courts to focus specifically on crimes under international law, supported by specifically appointed judges, prosecutors, investigators and lawyers, with the possibility of at least initially embedding foreign advisers or experts to work in tandem with Libyan officials;

(p) With regard to the justice sector:

(i) Urgently ensure protection for judges, prosecutors and other justice system staff and courts;

(ii) Implement an effective witness protection programme;

(iii) Prioritize reform of the Penal Code and the Code of Criminal Procedure to encompass violations of international human rights and humanitarian law, including crimes under international law, and ensure that procedures are consistent with international human rights standards;

(iv) Institute a vetting programme of the judicial police, the judiciary and other justice system actors in accordance with standards of due process to remove and prevent the recruitment of individuals about whom there are reasonable grounds to believe that they have been involved in human rights violations or abuses, or are responsible for corruption, bias or incompetence;

(v) Devise and implement a plan of action to strengthen the justice sector;

(q) Review transitional justice measures introduced after 2011 with a view to ensuring compliance with international human rights standards, and appropriate coverage of events in 2014 and 2015. Future transitional justice initiatives should be based on genuine, inclusive national consultations, with a particular focus on victim communities.

84. The High Commissioner recommends that the international community:

(a) Support the International Criminal Court, particularly by providing the Office of the Prosecutor with the resources necessary to investigate and prosecute the alleged crimes under international law committed in Libya since 2014;

(b) Provide assistance to strengthen the capacity of the justice and related sectors, and provide support to transitional justice mechanisms that are compliant with international standards;

(c) Support the convening of a high-level meeting in consultation with the Libyan authorities to bring together Libyan actors and international partners to discuss initiatives to increase accountability in Libya;

(d) Prioritize support for a programme of demobilization, disarmament and reintegration of members of armed groups, to be conducted in compliance with international human rights standards;

(e) Apply stringent screening procedures to recipients of technical assistance or other persons involved in peacekeeping or military exchanges or training programmes;

(f) Ensure protection of and practical assistance to Libyan human rights defenders (including by facilitating emergency visas, temporary shelter and relocation where necessary), and consider the establishment of a fund to support human rights defenders at risk;

(g) Ensure respect for the principle of non-refoulement, and provide protection, in accordance with international law, for those with a well-founded fear of persecution.

85. The High Commissioner recommends that the Human Rights Council:

(a) Continue to monitor developments in Libya and, to that end, to consider the establishment of a mandate of independent expert on Libya, to report to the Council on progress made towards accountability and on the situation of human rights;

(b) Encourage relevant special procedure mandate holders to make visits to Libya when feasible;

(c) Share a copy of the present report with the General Assembly and the Security Council for deliberation.

86. The High Commissioner recommends that the Security Council:

(a) Take action with respect to listing individuals responsible for violations or abuses under the current sanctions regime of the Security Council, while ensuring that any sanctions imposed are accompanied by rigorous procedural safeguards that guarantee minimum standards of due process;

(b) Increase the capacity of the Human Rights Division of UNSMIL to carry out monitoring and capacity-building activities, and mandate UNSMIL to undertake appropriate follow-up to the findings and recommendations contained in the present report.